IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6095 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JASHVANTSINH CHUNTHABHAI RATHOD

Versus

DIST EDUCATION OFFICER

Appearance:

MR BC DAVE for Petitioner

NOTICE SERVED for Respondent No. 1

Mr.V.M. Pancholi,

Assistant GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/03/2001

ORAL JUDGEMENT

1. The petitioner was appointed as a Primary Teacher at Pariaj Primary School, Taluka Matar, District Kheda on 16.8.1948. As per the averment in the petition, the said order was passed by the Administrative Officer of the

Nadiad School Board. The petitioner was also subsequently confirmed as a Primary Teacher on 12.6.1960. Subsequently, he was sent for training at Palanpur by an order dated 13th June, 1960. It seems that the petitioner could not go for training on the ground that his wife was seriously ill and as per the averment in the petition, certificate of Civil Surgeon, Kheda was also produced with an application to give exemption to the petitioner from such training for one year. The said application was rejected by the Department and, thereafter, the petitioner was relieved from service on 13th June, 1960.

2. Therafter, the petitioner went on making representations to the Department to reinstate him in service. Ultimately, the Department reinstated the petitioner in service by an order dated 10th December, 1962 as a Primary Teacher, Kajipura Primary School, Taluka Matar, District : Kheda. The said order is not produced on record, but, as per the averment in paragraph 3 of the petition, the Department treated the said period between 13.6.1960 and 9.11.1962 as `break in service' and accordingly, petitioner's appointment vide the order dated 10th November, 1962, was considered as a fresh appointment.

3. The petitioner therafter completed his training in the year 1965. The only question, therefore, which is required to be considered in this petition is whether the period between 13.6.1960 and 9.11.1962 should be treated as `break in service' or the said period should be treated as `continuous service' of the petitioner. The petitioner made certain representations to the Department, requesting that the aforesaid break should not be treated as `break in service' and the said period should be treated as `continuous service'. Copies of such representations are produced with the petition as Annexure `A' Collectively.

4. I have gone through the petition and I have also heard Mr.Pancholi, learned AGP, appearing for the State Government. The Department has not filed any affidavit-in-reply, but Mr.Pancholi, learned AGP, submitted that the Department has considered the order dated 10.11.1962 as a fresh appointment order and the same is considered as a new appointment order and, therefore, the aforesaid break in service is not condoned. However, it is not in dispute that the petitioner was originally appointed as back as in August, 1948 and he was asked to go for training in 1960. It is also not in dispute that the petitioner had sent a

certificate of Civil Surgeon showing the illness of his wife and, ultimately, he was reinstated in service, though by way of a fresh order. The result of the same is that the entire service of the petitioner from 1948 to 1960 is wiped out, which is likely to affect prejudicially the interest of the petitioner in his retirement dues and even for fixing his pension, the said period will not be treated as a continuous service since it is considered as a break.

5. Looking to the facts and circumstances of the case, and especially when the reason given by the petitioner was found to be correct, i.e. illness of his wife, and that is how he is reinstated in service, in my view, it is a fit case in which the aforesaid break from 13th June, 1960 to 9th November, 1962 should have been considered by the Department as notional service so that there may not be any break in service of the petitioner from 1948. The petitioner has also made representations to the Department from time to time. Therefore, considering the totality of the circumstances, as well as considering the facts of the case, it is a fit case in which the Department should have condoned the break for the period between 13.6.1960 and 9.11.1962 and the said period should have been treated as a period on service by condoning the break so that the same may not come in his way while fixing the pension and other retirement dues. It is clarified that the petitioner will not be entitled to any arrears of salary or any other pecuniary benefits for the aforesaid period. The said period may be treated as continuous service without break and accordingly, in case the petitioner has retired from service by this time, his pension and other retiremental dues may be fixed considering the aforesaid service as continuous service from the date of his appointment, i.e. 16.8.1948.

6. In view of what is stated above, the respondents are directed to condone the said period between 13.6.1960 and 9.11.1962 and the said period may be treated as continuous service of the petitioner and it may not be treated as break in service. However, as stated earlier, the petitioner would not be entitled to benefit of back wages or salary and the said period will be treated as continuous service only for the purpose of continuity of service and it may not be taken as a break in his service and as and when any question about fixation of his pension etc., comes, the said period also should be treated as continuous service.

The petition is accordingly allowed to the

aforesaid extent. Rule is made absolute to the said extent, with no order as to costs.

27th March, 2001. (P.B. Majmudar, J.)

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(apj)